IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 368 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHANKARBHAI BABUBHAI PATEL THROUGH HIS GUARDIAN-FATHER - Applicant(s)
Versus
RADHABEN D/O. VAJIRBHAI C. PATEL & 2 - Respondent(s)

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Appearance :
MR PP MAJMUDAR for Applicant(s) : 1,
MR MP SHAH for Respondent(s) : 1,
MS. KRUTI M SHAH for Respondent(s) : 1,
NOTICE UNSERVED for Respondent(s) : 2,
MR RC KODEKAR, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/07/2007

ORAL JUDGMENT

1. Rule. Ms. Kruti Shah, learned advocate waives service of rule on behalf of the respondent No.1

and Shri Kodekar, learned APP waives service of rule on behalf of the respondent No.3 – State. With the consent of the learned advocates appearing for the respective parties, the matter is taken up for final hearing today.

2. By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioner - husband has prayed for an appropriate writ, direction and/or order quashing and setting aside the order passed by the ld. JMFC, Pardi dated 22.9.2005 as well as the judgment and order passed by the ld. Additional Sessions Judge & Presiding Officer, 1st Fast Track Court, Valsad dated 1.12.2006.

3. As this Court proposes to remand the matter to the revisional Court for deciding the revision application on merits after condoning the delay in preferring the revision application, this Court is not further considering the case on merits. It appears from the record that being aggrieved and dissatisfied with the order passed

by the ld. Trial Court, the petitioner preferred revision application before the ld. Sessions Judge, Valsad. There was a delay in preferring the revision application and therefore, the Criminal Misc. (Delay) Application No. 327 of 2006 was submitted by the petitioner and by impugned order, the ld. Additional Sessions Judge & Presiding Officer, 1st Fast Track Court, Valsad dismissed the application for condonation of delay. Parties do not press for reasoned order in condoning the delay. With a view to see that the petitioner is not non-suited on the technical ground of delay and gets an opportunity to submit his case before the revisional Court on merits, this Court is of the opinion that the delay be condoned and the revisional application submitted by the petitioner is to be decided on merits, however, at the same time, cost is required to be imposed upon the petitioner as for no fault of the respondent No.1, she is dragged to this Court and she has to bear the expenses of the present proceedings. Under the circumstances, the costs

to be paid to the respondent No.1 is quantified at Rs.5,000/- which the petitioner is directed to deposit with the ld. Trial Court within a period of four weeks from today.

4. For the reasons stated above, petition succeeds in part. The impugned order passed by the ld. Additional Sessions Judge & Presiding Officer, 1st Fast Track Court, Valsad dated 1.12.2006 passed in Criminal Misc. (Delay) Application No. 327 of 2006 is hereby quashed and set aside and the ld. Revisional Court is directed to decide and dispose of the revision application submitted by the petitioner in accordance with law and on merits, if the petitioner deposits the aforesaid amount of Rs.5,000/- with the ld. Trial Court on or before 25th August, 2007. If the aforesaid amount is not deposited then the order passed by the ld. Trial Court dated 1.12.2006 in not condoning the delay will stand and the revision application is not required to be heard on merits.

5. Rule is made absolute to the aforesaid extent.

Direct Service is permitted.

(M.R.Shah, J.)

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